THE HONOURABLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No. 20190 OF 2001

DATED: 20.07.2006

Between:

S. Ambanna

….Petitioner

AND

Co-operative Tribunal, at Chandravihar,
M.J. Road, Hyderabad, represented by
Its Secretary and tohers

…Respondents

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ORDER:

This writ petition is filed challenging the judgment made in C.T.A.No.165 of 1998 dated 27.08.2001 wherein the surcharge orders passed under Section 60 (1) of the A.P. Cooperative Societies Act by the Deputy Registrar of Co-operative Societies, Wanaparthy, in his proceedings Rc.No.1348/95-B dated 17.08.1998 for recovery of amount of Rs.86,849.55 Ps., was confirmed.

According to the petitioner, he was the President of the 3rd respondent-Society. During the inspection under Section 52 of the A.P. Co-operative Societies Act as to the affairs of the 3rd respondent-society, it was found that the petitioner has committed certain irregularities and involved in misappropriation of funds. Thereafter, surcharge proceedings were initiated under Section 60 (1) of APCS Act and after conducting a detailed enquiry, the Deputy Registrar passed the order of surcharge holding him responsible for payment of an amount of Rs.86,849.55 Ps. Aggrieved by the same, the petitioner filed appeal in C.T.A.No.165 of 1998 on the file of the Cooperative Tribunal, Hyderabad. The Tribunal, on careful consideration of the surcharge proceedings passed by the Deputy Registrar of Co-operative Societies, Wanaparthy, and on perusal of the material made available before it has come to the conclusion that there are no merits in the appeal to interfere with the findings of the Deputy Registrar of Co-operative Societies, Wanaparthy and consequently, the appeal was dismissed. Aggrieved by the same, the present writ petition is filed.

The learned Counsel for the petitioner strenuously contended

that he had not acknowledged the receipt of amounts purported to have been handed over to him by the Secretary i.e., Rs.65,840/- and also denied the signature thereon and further that an amount of Rs.1,659.55 Ps being 50% of the amount not brought to the Cash Book and that Rs.38,700/- being the Binami loans sanctioned by the society and said to have been disbursed by the petitioner and these aspects were not properly considered by the authorities.

There is no necessity of going into all the details. Suffice to notice the well reasoned judgment of the Court below and the relevant portion reads as under:-

> "The Chief contention of the appellant is that when admittedly he was the President of the society of the 2nd respondent from July, 1987 to June, 1990 he cannot be saddled with the liability for disbursement of any benami loans or other alleged payments made by 2nd respondent-society on 28.07.199. Secondly, it is contended that one Abdul Khadder, Ex-Accountant and who became the President at the time of filing of the appeal admittedly collected the amount of Rs.69,159.10 Ps. and thus, instead of making the said Abdul Khadder as responsible, the appellant cannot be made liable. Thirdly, it is contended that the entries in the Cash Book were made on 28.09.1989 after audit was conducted on 30.09.1989 by Department Auditor. Lastly, it is contended that the entire Inspection Report U/s. 52 and the independent enquiry U/s. 60(1) of APCS Act, VII of 1964 was made collectively by the said persons viz., Abdul Khadder, Ex-Accountant, Secretary and other Officials.
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> The Inspection Report U/s 52 of the APCS Act, VII of 1964 was conducted by verification of the records and by examining the witnesses and also the documents produced. Though, similar contentions raised in the explanation submitted by the appellant, the letter dated 30.09.1989 styled as

Receipt signed by the appellant acknowledging that he received a sum of Rs.65,840/- collected by the Secretary in cash and the subsequent letter dated 28.07.1991 showing the names of (4) persons and the respective amount disbursed as loan and the same acknowledging the receipt of Rs.38,700/- in cash by the appellant and undertaking to repay by himself. The said documents and records were also considered along with the evidence of (4) persons on whose names those loans were disbursed and who denied the same in the enquiry U/s 60 (1) of APCS Act, VII of 1964, apart form considering the entire records pertain to the society during the relevant period. No doubt, the appellant herein was not the President by 28.07.1991 and no doubt the amount of Rs.65,840/- was collected from the members by the then secretary, the factum of issuing receipt for Rs.65,840/- on 30.09.1989 and also the letter dated 28.07.1991 acknowledging the receipt of an amount of Rs.38,700/- said to have been sanctioned to (4) members by the appellant, remain undisputed and unchallenged by the appellant. Thus, the contention of the appellant that he cannot be saddled with responsibilities for the amounts collected by then Accountant and further that by the date of 28.07.1991, he was not the President cannot stand in view of the receipt dated 30.09.1989 and the letter dated 28.07.1991, which are in the hands of the appellant and which have neither been disputed nor questioned nor challenged. The other contention of the appellant that the officials who conducted the inspection as well as enquiry U/s 60(1) of APCS Act VII of 1964 are colluded with the then Accountant and the Secretary are mere allegations without any basis and muchless proof the presumption under law that all official acts are properly and validly done though a rebuttal presumptions, it is for the person questioning the same to prove and establish such allegation. There being nothing on record to show

> otherwise, the contention of the appellant cannot sustain. The entire record examined both in the enquiry report U/s. 52 and also the inspection U/s 60 (1) of the Act are on the basis of evidence collected by examining the witnesses, documents and records and the impugned order now under appeal is a well considered and reasoned order. In view of our above discussion we see that there are no merits in this appeal to interfere with the findings of the learned Deputy Registrar of Cooperative Societies, Wanaparthy and consequently, the appeal of the appellant is liable to be dismissed with costs."

In view of the above, the contention of the petitioner that he has not acknowledged the receipt of amount of Rs.65,840/- purported to have been paid by the Secretary to him and he has also disputed the signature and the same was not considered by the Tribunal is not correct. The Tribunal passed a very detailed order, wherein it was noticed that the petitioner was not the President of the Society by 28.07.1991 and no doubt, the amount of Rs.65,840/- was collected from the members by the Secretary but the factum of issuing receipt for Rs.65,840/- on 30.09.1989 and also the letter dated 28.07.1991 acknowledging the receipt of an amount of Rs.38,700/- said to have been sanctioned to four members by the petitioner is undisputed and unchallenged by him.

Under those circumstances, neither the surcharge proceedings passed by the Deputy Registrar nor the order of the Tribunal confirming the same can neither be said to be arbitrary nor illegal. There are no merits in the writ petition and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

20th July, 2006

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